

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

SIGMA-ALDRICH CO.,

Defendant.

Case No.:

COMPLAINT

The United States of America, by the authority of the Attorney General of the United States and through the undersigned attorneys, acting at the request of the Administrator of the United States Environmental Protection Agency ("EPA"), files this complaint and alleges as follows:

STATEMENT OF THE CASE

1. This is a civil action brought pursuant to the Clean Air Act ("CAA"), 42 U.S.C. § 7401 et seq., against Defendant Sigma-Aldrich Co., operating through its division Sigma Chemical Company ("Sigma"), for civil penalties and injunctive relief for violations of the industrial refrigerant repair, testing, record-keeping, and reporting regulations at 40 C.F.R. Part 82, Subpart F, §§ 82.152 - 82.166 ("Recycling and Emission Reduction"), promulgated pursuant to Subchapter VI of the CAA ("Stratospheric Ozone Protection"), 42 U.S.C. §§ 7671-7671q, at two of Defendant's facilities that it owns and operates in St. Louis Missouri.

I. JURISDICTION AND VENUE

2. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331 (federal question), 1345 (United States as Plaintiff), and 1355 (fine, penalty, or forfeiture), and Section 113(b) of the CAA, 42 U.S.C. § 7413(b) (civil judicial enforcement).

3. Venue is proper in the Eastern District of Missouri, pursuant to § 113(b) of the CAA, 42 U.S.C. § 7413(b), and 28 U.S.C. §§ 1391(b), and 1395(a), because it is the judicial district in which: (i) Sigma resides and does business, (ii) the events and omissions giving rise to the claims

occurred, and (iii) the violations of the CAA occurred.

II. NOTICE AND AUTHORITY

4. The United States Department of Justice has authority to bring this action on behalf of the Administrator of the EPA pursuant to 28 U.S.C. §§ 516 (conduct of litigation reserved to Department of Justice), and 519 (supervision of litigation), and Section 305(a) of the CAA, 42 U.S.C. § 7605(a) (representation in litigation, Attorney General).

5. Notice of the commencement of this action has been given to the air pollution control agency for the State of Missouri. 42 U.S.C. § 7413(b).

III. DEFENDANT

6. Sigma-Aldrich Co. is an Illinois corporation. Until June of 2001, Sigma Chemical Company was a Missouri Corporation. In June of 2001, Sigma Chemical Company was merged into its parent, Sigma-Aldrich Co. Sigma Chemical Company is currently a division of Sigma-Aldrich Co.

7. At all times relevant to this action, Sigma owned and operated two facilities in St. Louis, Missouri, that are at issue in this Complaint: the "Dekalb" facility located at 3500 Dekalb Street and the "Cherokee" facility located at 3300 South Second Street. The Dekalb and Cherokee facilities produce industrial gasses for sale.

8. Defendant is a "person" as defined in Section 302(e) of the CAA, 42 U.S.C. § 7602(e), and within the meaning of Section 113(d) of the CAA, 42 U.S.C. § 7413(d).

IV. DEFINITIONS

9. Unless otherwise expressly provided herein, terms used in this Complaint that are defined in the CAA, or in the regulations promulgated pursuant to the CAA, will have the meaning assigned to them in the CAA and regulations. Whenever the terms set forth below are used in this Complaint, the following definitions apply:

- a. "Appliance" means a device as defined at 40 C.F.R. § 82.152.
- b. "Defendant" means Sigma Chemical Company.
- c. "EPA" means the United States Environmental Protection Agency and any successor

departments or agencies of the United States.

d. "Facility" means a discrete parcel of real property or such a parcel improved by Defendant's buildings, factory, plant, premises, or other thing, at which Defendant operates a business, containing at least one IPR Appliance.

e. "Industrial Process Refrigeration Appliance" or "IPR" means for the purposes of § 82.156(i), complex customized appliances used in the chemical, pharmaceutical, petrochemical, and manufacturing industries and that contains more than fifty (50) pounds of refrigerant.

f. "Parties" mean the United States and Defendant;

g. "United States" means the United States of America, acting on behalf of EPA.

STATUTORY AND REGULATORY PROVISIONS

10. Subchapter VI of the CAA, 42 U.S.C. §§ 7671-7671q ("Stratospheric Ozone Protection") implements the Montreal Protocol on Substances that deplete the Ozone Layer, and mandates the elimination or control of emissions of substances which are known or suspected to cause or significantly contribute to harmful effects on the stratospheric ozone layer, referred to as Class I and Class II substances.

11. Section 608 of Subchapter VI, 42 U.S.C. § 7671g ("National Recycling and Emission Reduction Program") requires that the EPA promulgate regulations establishing standards and requirements regarding the use and disposal of Class I and Class II ozone-depleting substances during the service, repair, or disposal of appliances and industrial process refrigeration.

12. EPA promulgated the regulations required by Section 608, codified at 40 C.F.R. Part 82, Subpart F, §§ 82.150- 82.166 ("Recycling and Emissions Reduction") (hereinafter "Subpart F Regulations"), on May 14, 1993. 58 Fed. Reg. 28,712.

13. Section 608 of the CAA states, "it shall be unlawful for any person, in the course of maintaining, servicing, repairing, or disposing of an appliance of industrial process refrigeration, to knowingly vent or otherwise release or dispose of any such Class I or Class II substances used as a refrigerant in such appliance (or industrial process refrigeration) in a manner which permits such

substance to enter the environment." 42 U.S.C. § 7671g(c)(1). The Subpart F Regulations reiterate this prohibition, effective June 14, 1993. 40 C.F.R. § 82.154(a).

14. The Subpart F Regulations contain leak repair requirements for industrial process equipment containing more than fifty (50) pounds of refrigerant. These regulations are aimed at reducing emissions of Class I and Class II ozone-depleting substances in the atmosphere.

15. Section 113(a)(3) of the CAA, authorizes the Administrator to commence a civil action in federal district court against any person who has violated any requirement or prohibition of Subchapter VI ("Stratospheric Ozone-Protection" [inclusive of Section 608]), including a requirement of any rule promulgated under the Act (which includes the Subpart F Regulations). 42 U.S.C. § 7413(a)(3)(C).

16. Section 113(b)(2) of the CAA authorizes the Administrator to bring a civil action in a federal district court against any person who has violated any requirement or prohibition of Subchapter VI ("Stratospheric Ozone-Protection" [inclusive of Section 608]), including a requirement of any rule promulgated under the Act (which includes the Subpart F Regulations). 42 U.S.C. § 7413(b)(2).

17. Section 113(b) of the CAA authorizes the assessment of civil penalties not to exceed \$25,000 per day for each violation of Section 608 of the CAA, 42 U.S.C. § 7671g.

18. Because all of the violations alleged in the Complaint occurred after January 30, 1997, Sigma is liable for civil penalties of up to \$27,500 per day for each violation occurring after that date, pursuant to Pub. L. 104-134 and 61 Fed. Reg. 69360, as corrected in 62 Fed. Reg. 13514, March 20, 1997.

GENERAL ALLEGATIONS COMMON TO BOTH FACILITIES

19. At all times relevant to this Complaint, Sigma was the owner or operator of both the Dekalb and Cherokee facilities located in St. Louis, Missouri.

20. Defendant is a "person," as defined at Section 302(e) of the CAA, 42 U.S.C. § 7602(e) and 40 C.F.R. § 82.152, and within the meaning ascribed under Section 113 of the CAA, 42 U.S.C. § 7413.

21. At all times relative to this Complaint Defendant has been the "owner or operator" of IPRs that are "Appliances" within the meaning of 42 U.S.C. § 7671(1) and 40 C.F.R. § 82.152(a).

22. At all times relevant to this Complaint, Defendant employed Class I substances and Class II substances (hereinafter "Refrigerant") in its IPRs at its Dekalb and Cherokee facilities.

23. At all times relevant to this Complaint, the full charge of Refrigerant required for each of the affected IPRs at the two facilities in question has been more than fifty (50) pounds.

24. Pursuant to 40 C.F.R. § 82.156, a facility with Industrial Process Refrigeration Appliances containing more than fifty (50) pounds of refrigerant must keep the leak rate of its equipment below a 35% annualized leak rate. Where the annualized leak rate from an IPR exceeds 35%, the facility must repair the leak within thirty (30) days (120 days if the facility cannot get a necessary part or if an industrial process shutdown, as defined by the Subpart F Regulations, is needed to repair the Appliance). 40 C.F.R. §§ 82.156(i)(1) and (i)(2).

25. Pursuant to 40 C.F.R. § 82.156(i)(3), if leak repair is attempted, the facility must then perform an initial verification leak check on the subject Appliance. A follow-up verification leak test must be performed within thirty (30) days. 40 C.F.R. § 82.156(i)(3).

26. If leak repair has not been successfully completed within thirty (30) days, the facility must replace or retrofit the Appliance. 40 C.F.R. § 82.156(i)(3)(ii). Once replacement or retrofit is selected, the facility must develop a one-year plan and submit it to the EPA prior to taking action. 40 C.F.R. § 82.156(i)(6).

27. Pursuant to 40 C.F.R. § 82.156(i)(3)(iii), if leak repair is attempted but the follow-up verification test reveals that the leak rate is more than 35%, the facility must notify the EPA within thirty (30) days, in accordance with 40 C.F.R. § 82.166(n).

28. Pursuant to 40 C.F.R. § 82.156(i)(5), owners and operators of Appliances normally containing more than fifty (50) pounds of Refrigerant and not covered under 40 C.F.R. §§ 82.156(i)(1) or (i)(2) must have leaks repaired in accordance with 40 C.F.R. § 82.156(i)(9) if the Appliance is leaking at a rate such that the loss of Refrigerant will exceed 15% of the total charge during a twelve-

month period.

29. Pursuant to 40 C.F.R. § 82.156(i)(9), owners or operators must repair leaks within thirty (30) days after discovery, or within thirty (30) days after such leaks should have been discovered, if such owners or operators intentionally shielded themselves from information which would have revealed a leak.

30. Pursuant to 40 C.F.R. § 82.166(k), the owner/operator of IPRs containing more than fifty (50) pounds of Refrigerant must maintain records detailing the date and type of service, as well as the amount of refrigerant added to the equipment.

31. All records required to be maintained pursuant to 40 C.F.R. § 82.166, must be kept for a minimum of three years. 40 C.F.R. § 82.166(m).

32. Pursuant to 40 C.F.R. § 82.166(n), the owner/operator of IPRs must report to the EPA, inter alia, the leak rate of any Appliance, the method used to determine the leak rate, the date a leak rate more than the allowable leak rate was discovered, the location and extent of leaks, and the date and type of repair work that has been completed.

FIRST CLAIM FOR RELIEF

[VIOLATIONS OF SECTION 608 OF THE CAA, AND 40 C.F.R. § 82.156(i)(2)]
(Failure to Repair Leak - Industrial Process Refrigeration Appliance)

33. Paragraphs 1 through 32 are realleged and incorporated herein by reference.

34. The annualized leak rates of Class I and Class II substances from one or more Industrial Process Refrigeration Appliances at the DeKalb and Cherokee facilities exceeded an annualized leak rate of 35% on one or more occasions during the five-year period prior to the filing of this Complaint, in violation of Section 608 of the CAA, 42 U.S.C. § 7671q, and 40 C.F.R. § 82.156(i)(2).

35. Leak rates at the above facilities varied from approximately 41% to 21,585%, in violation of Section 608 of the CAA, 42 U.S.C. § 7671g, and 40 C.F.R. § 82.156(i)(2), subjecting Defendant to the imposition of civil penalties not to exceed \$27,500 per day of each violation.

SECOND CLAIM FOR RELIEF
[VIOLATIONS OF SECTION 608 OF THE CAA, AND 40 C.F.R. § 82.156(i)(3)]
(Failure to Conduct Initial Verification Leak Test)

36. Paragraphs 1 through 35 are realleged and incorporated herein by reference.

37. Defendant failed to perform one or more initial verification leak tests as required by Section 608 of the CAA, 42 U.S.C. § 7671q, and 40 C.F.R. § 82.156(i)(3) on one or more Appliances ("IPRs") at the DeKalb and Cherokee facilities during the five-year period prior to the filing of this Complaint.

38. Defendant's failure to perform initial verification leak tests on one or more of the Appliances ("IPRs") at each of the facilities above, was in violation of Section 608 of the CAA, 42 U.S.C. § 7671g, and 40 C.F.R. § 82.156(i)(3), and subjects Defendant to the imposition of civil penalties not to exceed \$27,500 per day of each violation.

THIRD CLAIM FOR RELIEF
[VIOLATIONS OF SECTION 608 OF THE CAA, AND 40 C.F.R. § 82.156(i)(3)]
(Failure to Conduct Follow-up Verification Leak Test)

39. Paragraphs 1 through 38 are realleged and incorporated herein by reference.

40. Defendant failed to perform one or more follow-up verification leak tests as required by Section 608 of the CAA, 42 U.S.C. § 7671q, and 40 C.F.R. § 82.156(i)(3) on one or more Appliances ("IPRs") at the Dekalb and Cherokee facilities during the five-year period prior to the filing of this Complaint.

41. Defendant's failure to perform follow-up verification leak tests on one or more of the Appliances ("IPRs") at each of the facilities above, was in violation of Section 608 of the CAA, 42 U.S.C. § 7671g, and 40 C.F.R. § 82.156(i)(3), and subjects Defendant to the imposition of civil penalties not to exceed \$27,500 per day of each violation.

FOURTH CLAIM FOR RELIEF
[VIOLATIONS OF SECTION 608 OF THE CAA, AND 40 C.F.R. § 82.156(i)(3)(ii)]
(Failure to Retrofit or Retire Appliances Within One Year)

42. Paragraphs 1 through 41 are realleged and incorporated herein by reference.

43. Defendant failed to retrofit or retire leaking IPRs, or otherwise comply with the

requirements of Section 608 of the CAA, 42 U.S.C. § 7671q, and 40 C.F.R. § 82.156(i)(3)(ii) within one year after a follow-up verification test indicated that repairs to the IPRs were not successfully completed with respect to one or more IPRs at the Dekalb and Cherokee facilities during the five-year period prior to the filing of this Complaint.

44. Defendant's failure to retrofit or retire leaking IPRs within one year after a follow-up verification test indicated that repairs to the IPRs were not successfully completed, was in violation of Section 608 of the CAA, 42 U.S.C. § 7671g, and 40 C.F.R. § 82.156(i)(3)(ii), and subjects Defendant to the imposition of civil penalties not to exceed \$27,500 per day of each violation.

FIFTH CLAIM FOR RELIEF
[VIOLATIONS OF SECTION 608 OF THE CAA, AND 40 C.F.R. § 82.156(i)(6)]
(Failure to Develop Retrofit or Retirement Plan)

45. Paragraphs 1 through 44 are realleged and incorporated herein by reference.

46. Defendant failed to develop a written, one-year retrofit or retirement plan for leaking IPRs as required by Section 608 of the CAA, 42 U.S.C. § 7671g, and 40 C.F.R. § 82.156(i)(6) with respect to one or more IPRs at the Dekalb and Cherokee facilities during the five-year period prior to the filing of this Complaint.

47. Defendant's failure to develop a written, one-year retrofit or retirement plan for leaking IPRs was in violation of Section 608 of the CAA, 42 U.S.C. § 7671g, and 40 C.F.R. § 82.156(i)(6), and subjects Defendant to the imposition of civil penalties not to exceed \$27,500 per day of each violation.

SIXTH CLAIM FOR RELIEF
[VIOLATIONS OF SECTION 608 OF THE CAA, AND 40 C.F.R. § 82.156(i)(3)(iii)]
(Failure to Notify EPA of Failed Follow-Up Verification)

48. Paragraphs 1 through 47 are realleged and incorporated herein by reference.

49. Defendant failed to notify EPA that their IPRs failed one or more follow-up verification tests as required by Section 608 of the CAA, 42 U.S.C. § 7671g, and 40 C.F.R. § 82.156(i)(3)(iii) with respect to one or more IPRs at the Dekalb and Cherokee facilities during the five-year period prior to the filing of this Complaint.

50. Defendant's failure to notify EPA of the failure of one or more follow-up verification tests, was in violation of Section 608 of the CAA, 42 U.S.C. § 7671g, and 40 C.F.R. § 82.156(i)(3)(iii), and subjects Defendant to the imposition of civil penalties not to exceed \$27,500 per day of each violation occurring thereafter.

SEVENTH CLAIM FOR RELIEF
[VIOLATIONS OF SECTION 608 OF THE CAA, AND 40 C.F.R. § 82.166(k)]
(Failure to Maintain Service Records)

51. Paragraphs 1 through 50 are realleged and incorporated herein by reference.

52. Defendant failed to maintain records detailing the date(s) and type(s) of maintenance, service or repair activities performed on their IPRs as required by Section 608 of the CAA, 42 U.S.C. § 7671g, and 40 C.F.R. § 82.166(k) with respect to one or more IPRs at the Dekalb and Cherokee facilities during the five-year period prior to the filing of this Complaint.

53. Defendant's failure to maintain records detailing the date(s) and type(s) of maintenance, service or repair activities performed on their IPRs was in violation of Section 608 of the CAA, 42 U.S.C. § 7671g, and 40 C.F.R. § 82.166(k), and subjects Defendant to the imposition of civil penalties not to exceed \$27,500 per day of each violation.

EIGHTH CLAIM FOR RELIEF
[VIOLATION OF SECTION 608 OF THE CAA, AND 40 C.F.R. § 82.166(n)]
(Failure to Report the Leak Rate of Appliances)

54. Paragraphs 1 through 53 are realleged and incorporated herein by reference.

55. Defendant failed to maintain on-site and to report to EPA information, records and reports detailing the leak rate of any Appliance, the method used to determine the leak rate, the date a leak rate more than the allowable leak rate was discovered, the location and extent of leak, and the date and type of repair work performed as required by Section 608 of the CAA, 42 U.S.C. § 7671g, and 40 C.F.R. § 82.166(n) with respect to one or more IPRs at the Dekalb and the Cherokee facilities

during the five-year period prior to the filing of this Complaint.

56. Defendant's failure to maintain on-site and to report to EPA information, records and reports detailing the leak rate of any Appliance, the method used to determine the leak rate, the date a leak rate more than the allowable leak rate was discovered, the location and extent of leak, and the date and type of repair work performed was in violation of Section 608 of the CAA, 42 U.S.C. § 7671g, and 40 C.F.R. § 82.166(n), and subjects Defendant to the imposition of civil penalties not to exceed \$27,500 per day of each violation.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, the United States of America, prays that:

1. Defendant be enjoined from operating its facilities in violation of Subchapter VI of the CAA ("Stratospheric Ozone Protection"), 42 U.S.C. §§ 7671-7671q, and regulations promulgated thereafter, 40 C.F.R. Part 82, Subpart F;
2. The Court assess civil penalties against Defendant of not more than \$27,500 per day for each violation or failure to comply with the Subpart F Regulations and the Clean Air Act;
3. The United States be awarded its costs and expenses incurred in this action; and
4. The United States be granted such other and further relief as this Court deems appropriate.

Respectfully Submitted,

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